

Application No. 09/740,209

**REMARKS**

In an Office Action dated October 21, 2005, it was pointed out that Applicant's response of August 8, 2005 failed to address the 103 rejection of claim 23 and 24 by Boucher et al. Applicant apologizes for the oversight.

Applicant respectfully submits that Boucher et al. is insufficient to render a prima facie case of obviousness with respect to claims 23 and 24 because Boucher does not describe "a pulse of acoustic energy, the pulse having a short duration and low frequency such that the pulse of acoustic energy generates capillary waves" as the claim was amended to in the last Office Action response of August 8, 2005. Applicant notes that our devices use high intensity short duration pulses thereby allowing only capillary droplets and not chaotic droplets.

Boucher describes two operating regimes, neither of which uses a pulse of acoustic energy. In the first regime, Boucher uses an unfocused ultrasonic system with high intensity and low frequency (not pulsed) that generates capillary waves over a fairly large area. In the second regime, Boucher uses high intensity and high frequency (not pulsed) that generates both chaotic large droplets and capillary droplets. The use of unpulsed radiation results in the larger chaotic droplets which are undesirable. Because Boucher does not use a pulse of acoustic energy, Applicant respectfully submits that claim 23 is not rendered obvious by Boucher.


Furthermore, Applicant also respectfully submits that claim 24 is not rendered obvious by Boucher because (1) claim 24 depends on claim 23 and thus includes the claim 23 limitation of using pulsed acoustic energy and (2) Boucher does not show that the "capillary wave is formed by the relaxation of at least one principle mound of pharmaceutical product". In Boucher, there is no focusing of the ultrasonic system, thus at low frequencies (the first regime) no principle mound results. In the second regime in which higher frequencies are used, a principle mound arguably appears because the acoustic beam from the transducer does not spread very much and thus has limited spatial extent. However, Applicant notes that claim 23 upon which claim 24 depends claims a low frequency.

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Applicant has added claim 25 to claim that the principle mound is caused by a focused beam. As previously described, Boucher does not rely on beam focusing.

In view of the preceding amendments and remarks, Applicant respectfully submits that the claims as amended are allowable over the cited prior art reference, and allowance is hereby respectfully requested. In the event that the Examiner believes a teleconference would facilitate prosecution, Applicant respectfully requests that Examiner contact the undersigned.

Respectfully submitted,

  
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